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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 9.08.001, 9.08.002, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 AND 9.08.160 AND CREATING SECTION 9.08.000, 9.08.095 AND 9.08.098 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TREES AND SHRUBS AND REPEALING THE ORIGINALS OF SECTIONS 9.08.001, 9.08.002, 9.08.003, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.040, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 AND 9.08.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 9.08.000 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Definitions.** The following terms, as used in this chapter, shall have the following meanings:

‘Alter’ means to cut, girdle, prune, destroy, remove or in any manner injure a tree or large shrub.

‘City’ means the City of Wichita.

‘City Council’ means the City Council of the City of Wichita.

‘Dangerous Tree’ means any tree, large shrub or part thereof, living or dead, which an officer finds is in such a condition and is located in such a place as to constitute a danger to persons or property in the vicinity of the tree.

‘Dead Tree’ means any tree, large shrub or branch which an officer has determined that no part of the tree or branch is living.

‘Director’ means the Director of the Wichita Park and Recreation Department or his or her designee.

‘Diseased or infected tree’ means any tree or large shrub which is infected or infested with any tree or plant disease or insect, pest or larvae, which an officer finds that the uncontrolled presence of such disease or infestation constitutes a hazard to or could result in damage to or destruction of other trees in the community.

‘Officer’ means representatives of the Department of Park and Recreation, Office of Central Inspection and Department of Public Works who are designated and authorized to enforce the provisions of this code.

‘Owner’ means the owner or person in control of the property.

‘Park property’ means all grounds, roadways and land acquired or owned by the City and all grounds, roadways and land owned by the Board of Park Commissioners of the City of Wichita, Kansas, which are designated for use as a park by the City Council.

‘Person’ means individuals, groups, organizations, associations, partnerships, firms and corporations.

‘Public property’ means any dedicated or undedicated public land, streets, parking lots, public spaces and rights-of-way within the City.

‘Public right-of-way’ means the entire width of the area from property line to property line, including the area between the roadway and the abutting private property line.

‘Sidewalk’ means that portion of a street between the curb line or the lateral lines of a roadway and the adjacent property lines intended for use by pedestrians.

‘Street’ means the entire width between property lines of every way publicly maintained when any part of the area is open to use by the public for purposes of vehicular travel. Such term shall include highways, avenues, boulevards, trafficways, alleys or any other public way for vehicular travel by whatever name.

‘Trees’ means trees, tree materials and large shrubs.”

SECTION 2. Section 9.08.001 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Declaration of Policy regarding costs of tree maintenance .** The cost of planting, maintaining, pruning, removal and care of trees in the public rights-of-way shall be the responsibility of the City of Wichita.”

SECTION 3. Section 9.08.002 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Duties of Director of Park and Recreation.** (a) The Director of Park and Recreation is responsible for all maintenance functions relating to trees in the public rights-of-way and on park and public property.

(b) The Director of Parks and Recreation, the Office of Central Inspection and the Wichita Department of Public Works, and their designated representatives shall be responsible for the enforcement of all provisions of this Code.

(c) All officers are hereby authorized to make such investigations, to issue notices, orders and directions as are necessary for the enforcement of the provisions of this chapter.”

SECTION 4. Section 9.08.005 of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Injuring trees on public property.** It shall be unlawful for any person to intentionally alter any shade tree, shrub, flower, or other ornamental plant standing or growing, wholly or in part, in or on any park property, street or on any public property of the City.”

SECTION 5. Section 9.08.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Injuring trees -- Consent.** (a) It shall be unlawful for any person to intentionally alter any trees standing or growing, wholly or in part in or on any street, public right-of-way, or other public property without the consent of the Director.

(b) The provisions of subsection (a) shall not apply to:

(1) the removal of branches which are less than two (2) inches in diameter which are required to be removed to maintain seven (7) feet of clearance above sidewalks and 13.5 feet of clearance above streets; and

(2) the removal of water sprouts, and suckers.”

SECTION 6. Section 9.08.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Application for permission to alter trees.** (a) Any person desiring to alter, spray or interfere with any tree, or any branch, root or part thereof, standing or growing, wholly or in part, in any street, or public right-of-way shall first request permission from the Director to do so. If permission is deemed prudent, the Director shall grant such permission.

(b) In the event of a storm, freeze or other environmental event resulting in damage to trees, the adjoining property owner will be allowed to remove broken or damaged branches in the right-of-way without permission from the Director. Disposal of debris generated by the adjoining property owner will be the responsibility of the property owner. Permission from the Director will be required for the removal of an entire tree.”

SECTION 7. Section 9.08.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Duty of person altering; permitting wood, brush, logs, etc., to remain on sidewalk, etc., prohibited.**

It shall be the duty of any person altering any tree, branch or root referred to in Section 9.08.020, to remove the stump, fill the hole with dirt and clean up and haul away all wood, brush, logs, stumps and other debris resulting from the altering of such tree. No person shall permit any wood, brush, logs or stumps to remain on any sidewalk, parking or any part of the street after a tree is altered.”

SECTION 8. Section 9.08.050 of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Electric wires, etc.--Temporary removal or shutting-off current in order to alter.**

It shall be the duty of any person owning or having charge of wires or any other conductors of electricity, which pass through or near trees within the limits of parks property, streets, public rights-of-way and public property of the City, to cause such wires to be temporarily removed or the electricity in such wires to be shut off when it is necessary in order to alter or treat any such trees.”

SECTION 9. Section 9.08.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Notice to owner to remove or shut off current; duty upon notice--**  
**Exception.** When it shall become necessary to shut off the electricity or remove the wires as provided in Section 9.08.050, the Director shall give the owner of such electrical wires, a notice to shut off the electricity or remove the wires. It shall be the duty of the person owning such wires, to, within forty-eight hours from the time of such notice, cause the wires to be temporarily removed or the electricity to be shut off. When the work is completed which required the electricity to be shut off or wires to be removed, the Director shall notify the owner of such wires that the power may be restored. Where such wires are owned by a public utility company, in lieu of removing said wires or shutting off electricity, the Director may authorize the trees to be altered by the utility company under the supervision of the Director at no cost to the City.”

SECTION 10. Section 9.08.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Tree Nuisances Declared.** (a) All dead or broken trees, or branches thereof, within the corporate limits of the City, which have become dangerous, or which are likely to become dangerous to the public safety, or to persons or property within the vicinity of the tree are hereby declared to be and constitute a public nuisance.

(b) Diseased or infested trees within the corporate limits of the City are declared to be a public nuisance.

(c) Dangerous trees within the corporate limits of the City are declared to be a public nuisance.”

SECTION 11. Section 9.08.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Duty of owners of private premises to abate.** It shall be the duty of the owners of any private property, upon which any nuisance as described in Section 9.08.070 may be located, to cause the same to be promptly abated by treating or removing any designated tree or trees.”

SECTION 12. Section 9.08.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Notice to remove or abate; contents.** It shall be the duty of the Director, or other officer, to serve written notice, by personal service or registered or certified mail, of the existence of any nuisance as provided for in Section 9.08.070, to the owner or occupants of the property upon which the nuisance is

situated. The notice shall require that all nuisances, as defined by Section 9.08.070, be promptly removed and abated. The notice shall require that all such nuisances be abated within a designated time period, not exceeding fourteen (14) days from the date of the notice, provided that an extension of one ten (10) day period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the nuisance.”

SECTION 13. Section 9.08.095 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Hearings--Right of person aggrieved by service of notices.**

Any person affected by a notice, which has been issued pursuant to Section 9.08.090 who is aggrieved thereby, and who believes the same to be contrary to the policies or regulations of the City, may request and shall be granted an informal hearing on the matter before the Director or his or her designated representative. Such person shall file, in the Department of Parks and Recreation, a written request for such informal hearing and set forth a brief statement of the grounds therefor, within ten days after the day notice was served. Upon receipt of such request, the Director shall set a time and place for the informal hearing and shall give written notice thereof. At such informal hearing, the individual shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The informal hearing shall be commenced not later than ten days after the day on which the request was filed; provided that upon application of the individual, the Director may postpone the date of the informal hearing for a reasonable time beyond such ten day period, if



in his or her judgment the individual has submitted a good and sufficient reason for such postponement.”

SECTION 14. Section 9.08.098 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Sustaining, modifying or withdrawing notices.** After an informal hearing as provided for in Section 9.08.095, the Director or his or her designated representative may sustain, modify or withdraw the notice, depending upon his findings as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with. If the Director or his or her designated representative sustains or modifies such notice, it shall be deemed to be an order.”

SECTION 15. Section 9.08.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Failure of occupant or owner of premises to comply with notice to abate or remove.** (a) If the occupant or owner of the private property fails or refuses to abate such nuisance within the time specified in the notice, it shall be the duty of the Director or other officer authorized to enforce this code, to cause such nuisance to be abated.

(b) If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient

shall have thirty (30) days from the date of the Notice to make full payment. The Notice of Cost shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the violation, including relevant ordinances;
- (3) The nature of the work performed to abate the violation;
- (4) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
- (5) That the notice is a demand for payment within thirty days from the date of notice;
- (6) That failure to pay the entire amount within thirty days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
- (7) That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
- (8) That payment shall be made by check or money order made payable to the City of Wichita, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

(c) If the payment of costs is not made within the thirty-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk, at the time of certifying other City taxes to the County Clerk, shall certify the aforesaid costs, and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground. The costs shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorney's fees, and administrative costs have been paid in full."

SECTION 16. Section 9.08.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Affixing, fastening, etc., notices, advertisements, placards, etc.**

No person shall affix, fasten or tie any notice, advertisement, placard, wire, cable or anything to any tree growing wholly or in part in or on any public streets rights-of-way or parks, or public property without the consent of the Director."

SECTION 17. Section 9.08.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Placing stones, cement, etc., near tree trunk.** It shall be unlawful for any person to place or maintain upon the ground within the public streets, public rights-of-way or park property of the City, any stone, cement or other

substance which shall impede the free passage of water and air to the roots of any growing tree therein, without leaving an open space of ground outside the trunk of such tree in an area not less than sixteen (16) square feet, or approximately four (4) feet by four (4) feet without first having secured the consent of the Director to do so.”

SECTION 18. Section 9.08.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Guards or devices to prevent injury required during erection or repair of buildings, etc.**

In the erection or repair of any building or structure in the City, the owner shall place or cause to be placed guards or devices around all nearby trees within the streets, public rights-of-way, or parks or public property of the City, as shall prevent injury to such trees.”

SECTION 19. Section 9.08.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Planting and maintenance: rules and regulations.** The Director shall determine when and where trees shall be planted on parks property, public rights-of-way and streets, the kind of trees and all matters relating to the planting and maintenance thereof within the city. It shall be the duty of the Director to care for, maintain and protect trees planted upon the streets, public property and public rights-of-way and to make all rules and regulations necessary therefor.”

SECTION 20. Section 9.08.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Abutting property owners on streets and avenues to keep pruned at minimum height.**

It shall be the duty of all persons owning or controlling any real estate abutting or adjoining any street to prune the trees on their premises so that the limbs and undergrowth shall not hang or extend down over the sidewalk or street abutting such property less than seven feet from the level of such sidewalk or 13.5 feet from such street as required by Section 11.22.020 of the Code of the City of Wichita.”

SECTION 21. Section 9.08.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Penalties.** (a) Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars or be imprisoned for not more than thirty days or be so fined and imprisoned at the discretion of the court.

(b) In addition to the penalty set forth above, the court may order the defendant to perform the necessary labor to repair, remove or replace trees damaged by that person, or to pay any costs incurred by the Director related to the repair or replacement of trees damaged by that person.”

SECTION 22. The originals of Section 9.08.001, 9.08.002, 9.08.003, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.040, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 and 9.08.160 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 23. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law